IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

Eduardo Colon-Nales (1),

Defendant

Criminal No. 03-278 (PAD)

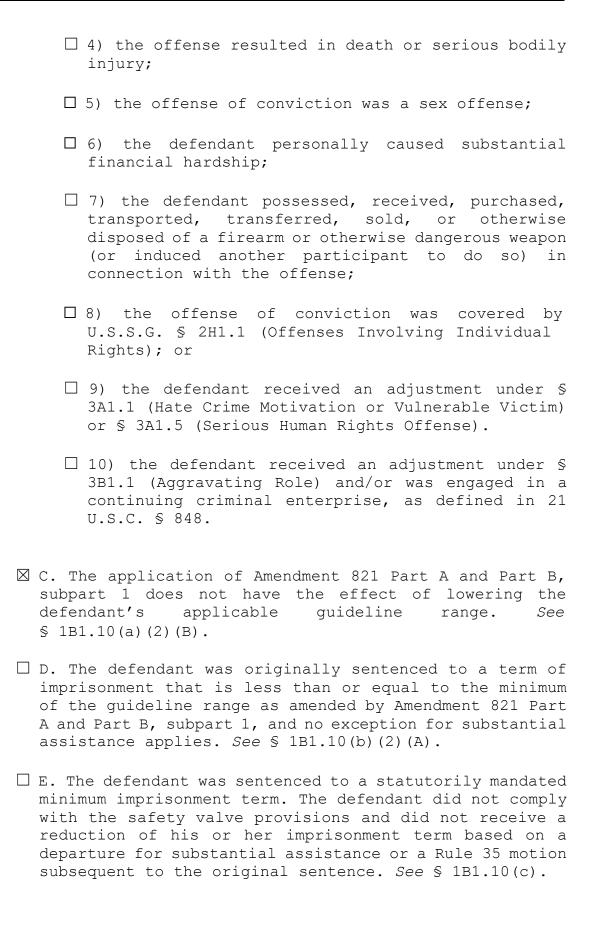
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

\boxtimes The defendant is <u>not</u> eligible for a sentence reduction based on the following factor(s):

- ☐ A. The guidelines range that applied in the defendant's case was not determined by U.S.S.G. § 4A1.1(d) or defendant's status as a zero-point offender under Chapter 4, Part A.
- \square B. The defendant does not meet <u>all</u> of conditions specified by § 4C1.1. Specifically, one or more of the following criteria applies:
 - ☐ 1) the defendant has criminal history points from Chapter Four, Part A;
 - ☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
 - ☐ 3) the defendant used violence or credible threats of violence in connection with the offense;



☐ The defendant <u>may be</u> eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons:

Criminal History Category V. He received two criminal history status points for committing the offense while under a criminal justice sentence. Under Amendment 821, he would only receive one additional point for committing the offense while under a criminal justice sentence and having 9 criminal history status points. His new total points would be 10 but he would remain under Criminal History Category V. As such, he is not eligible for a sentence reduction.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 12th of February, 2024.

s/ Bruce J. McGiverin
UNITED STATES MAGISTRATE JUDGE